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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ROBERT E. MARTIN, as Conservator,
etc.

Plaintiff and Respondent,

v.

JULIE MARTIN,

Defendant and Appellant.

G038575

(Super. Ct. No. 07FL000019)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Thomas H. Schulte, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Julie Martin, in pro. per., for Defendant and Appellant.

Western State University Legal Clinic and Terence W. Roberts for Plaintiff and Respondent.

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This is an appeal from a restraining order issued by the court against appellant Julie Martin (Julie)¹ in April 2007. Julie, acting in propria persona has filed a 268 page opening brief and a 93 page reply to respondent's 8 page brief.² Her briefs are replete with facts lacking record references, facts unrelated to the instant appeal, and inappropriate argument. Indeed, they are so full of extraneous material that it is nearly impossible to separate out what might be relevant to the instant case. Rather than either deeming Julie's arguments waived³ or attempting to address each of her literally dozens of headings and subheadings, we shall instead simply address what this case purports to be — an appeal from the grant of a restraining order — and only address the pertinent facts and the cognizable legal issues Julie raises, as best we can discern them. Having carefully reviewed the record and the related law, we find no error and affirm.

I

FACTS

Respondent Robert E. Martin (Robert) is the father of both Julie and Robert J. Martin (Bobby), a developmentally disabled adult. Bobby has been under a limited conservatorship since 1992, with respondent as the conservator. In 2002, Julie attempted to remove respondent as Bobby's conservator and substitute herself in his place. In 2003, the court rejected her efforts. However, the court did establish a visitation schedule

¹ To eliminate any potential confusion between family members, we shall refer to them by their first names. No disrespect is intended. (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 475-476, fn. 1.)

² Appellant filed requests to file oversized briefs, which were conditionally granted. While we could now deny that request and require her to file a brief that complies with the California Rules of Court, for the sake of expediency, we shall not do so.

³ It would be entirely appropriate to do so. Rule 8.204(a)(2)(C) of the California Rules of Court requires the appellant to "[p]rovide a summary of the significant facts limited to matters in the record" a requirement that appellant has utterly failed to meet.

between Julie and Bobby. The most recent order, issued in 2006, restricted Julie's access to the home where Bobby lived.

On January 4, 2007, Robert, on Bobby's behalf, filed an application for a restraining order against Julie. The request was made on the grounds that Julie was jeopardizing Bobby's placement in his residential care home. The application stated that the home was on the verge of giving Bobby 30 days' notice to find another placement. "The only reason they are considering such strong action is because of Julie's constant harassment of the home and their staff, Julie's refusal to conform with visitation rules and Julie's disrespectful treatment of staff personnel." The application detailed instances of Julie's refusal to abide by visitation rules, resulting in the police being dispatched to her home to locate Bobby. The application further stated that Julie suffered from mental health problems and demonstrated unrealistic expectations about her brother's abilities, leading to decisions that were not in his best interests. Robert feared that if Julie's behavior continued, Bobby would lose his placement. "As Bobby's [c]onservator, I believe that it is very important that Bobby retain his current placement at the Lincoln Home V that is familiar to him, where he is comfortable with the other clients, and where he receives good care by the staff."

The court issued a temporary restraining order on January 4 and set a hearing for January 24. Julie filed responding papers as well as her own request for a temporary restraining order against Robert, which was denied pending hearing on Robert's request.

At the hearing on January 24, the court heard from both parties. Robert testified that while Julie loved her brother, her actions jeopardized the stability of his routine and placements. He also testified that Julie was very suspicious about everyone involved with Bobby's care, and that he had been told by numerous people involved with Bobby's care that Julie should be kept away from him. While he did not wish to do that, he felt he was left with little choice until she could conduct herself differently.

The court was also concerned about its jurisdiction to make any order that might interfere with existing orders issued by the probate court, and made clear it would not do so. The court advised Julie that if she wanted to make a change in Bobby's conservatorship, the place to do that was the probate court. At the conclusion of the hearing, the court issued the restraining order directing Julie not to have any contact with her brother. The court stated that it hoped that either Julie or Robert would file the appropriate action in the probate court to ask for further direction.

After Julie's motion for reconsideration was denied, she filed the instant appeal.

II

DISCUSSION

The first potential issue is jurisdiction. The court issued the restraining order pursuant to Elder Abuse and Dependent Adult Civil Protection Act (the Act). (Welf. & Inst. Code, § 15600, et seq.) The Act was intended to protect elders and dependent adults from abuse, neglect and abandonment. (Welf. & Inst. Code, § 15600, subd. (a).)

The Act gives the court the power to make protective orders, including "An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls . . . destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of the petitioner." (Welf. & Inst. Code, § 15657.03, subd. (b)(1).) The court may also issue orders restraining a party from the protected adult's residence or dwelling.

Given the broad scope and intent of the Act, as well as the specific provisions granting the court the power to issue protective orders, we find the court had jurisdiction to issue the instant restraining order.

Julie's briefs appear to attempt to raise issues of due process, which requires both notice and an opportunity to be heard. (*In re Crystal J.* (1993) 12 Cal.App.4th 407, 412.) We find no issue here. Julie had notice of the proceeding and appeared. She argued and was heard by the court, stating why she felt the order should not be issued. Thus, due process was satisfied.

Julie also claims that she was not allowed to present the testimony of three witnesses, who would testify that the allegations against her "are not true."

"Broadly speaking, an appellate court reviews any ruling by a trial court as to the admissibility of evidence for abuse of discretion." (*People v. Alvarez* (1996) 14 Cal.4th 155, 201.) The trial court's "discretion is only abused where there is a clear showing [it] exceeded the bounds of reason, all of the circumstances being considered." (*People v. DeJesus* (1995) 38 Cal.App.4th 1, 32.) Moreover, even where evidence has been erroneously excluded or admitted, the judgment or decision shall not be reversed unless the reviewing court believes the error resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13; Evid. Code, §§ 353, 354.) The appellant has a burden of demonstrating that but for the error, a different outcome would have been probable. (Code Civ. Proc, § 475.)

The testimony that Julie wished to present, related to allegations that Bobby was being abused in his placement. The court advised Julie several times that such issues were not within the limited scope of the hearing on the restraining order, and that she should bring any issue of abuse to the probate court. We assume for the sake of argument that Julie's witnesses were formally excluded from testifying and that she properly objected. The court was within its discretion to exclude Julie's proffered witnesses pursuant either to Evidence Code section 350, which governs relevance, or Evidence Code section 352. That section states that evidence may be excluded if its probative value is substantially outweighed by the undue consumption of time. Under either statute, the court was within its discretion to exclude Julie's proffered witnesses.

Finally, we briefly address the propriety of issuing the restraining order on the facts before the court. We review a grant or denial of injunctive relief for abuse of discretion. (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 849-850.) A trial court's discretion must "'be exercised in conformity with the spirit of the [applicable] law and in a manner to subserve and not to impede or defeat the ends of substantial justice.' [Citations.]" (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1066, superseded on other grounds by statute, as stated in *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1032.) Thus, the scope of the trial court's discretion is determined by the governing law — in this case, the Act. The Act was designed to prevent abuse. In this case, the potential abuse was Bobby's eviction from his placement due to Julie's actions. We find the court's decision both supported by the evidence and authorized by the Act. If Julie wishes to raise issues regarding Bobby's conservatorship, the proper forum for such a request is with the probate court.

III

DISPOSITION

The order is affirmed. In the interests of justice, each party shall bear their own costs on appeal.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.